THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Revision No.5223 of 2004

Date of Decision: 15 - 9 - 2006

Darshan Singh and others **.....Petitioners**

v.

Major Singh and others **.....Respondents**

CORAM: HON'BLE MR.JUSTICE P.S.PATWALIA

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Present: Mr.Harkesh Manuja, Advocate
for the petitioners.

Mr.B.S.Bhalla, Advocate
for the respondents.

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P.S.PATWALIA, J.

The present revision petition has been filed challenging order dated 31.10.2002 dismissing objections and additional objections filed by the judgment-debtors (for short, `the JDs') in an execution application filed by the decree-holders (for short, `the DHs') as also order dated 20.9.2004 vide which the learned Additional District Judge, Moga dismissed the appeal filed by the JDs against the order dismissing their objections.

These execution applications have been filed for execution of a decree dated 6.5.1974 in Suit No.246 of 1970. A reading of the execution application filed would show that a first appeal against the aforementioned judgment was dismissed on 19.5.1978 and even a regular second appeal was decided on 20.5.1983. Since then the DHs have been trying to get possession of the land. Objections filed by the JDs have already been dismissed once and even

an appeal filed by the JDs against the order of the executing Court has been dismissed as is apparent from the following facts reproduced in para 5 of the order of the trial Court:-

> ".....The matter in question has already been decided by the learned court vide order dated 10.8.1991. Then the DH has filed application for the delivery of actual possession. The JDs have filed objections against said application and same were dismissed by the court of Sh.J.S.Bhatia, then Ld. A.S.J. Moga, vide order dated 21.12.1994. The JDs again filed an appeal against the said order dated 21.12.1994 and same was dismissed by Court of Sh.A.N.Jindal, Ld. District Judge, Faridkot vide order dated 9.5.2001. The JDs have got no right to raise similar issue again and again, and prayed for dismissal of the additional objections."

The JDs had again filed the objections. It was contended by the JDs that there were two DHs, namely, Smt.Bhago and Smt.Rajo. Both have since expired. The present execution application has now been filed by Piara Singh legal representative of Smt.Bhago. It was therefore their contention that the present application was not maintainable as Smt.Bhago's share could not be claimed only by one heir in the absence of other heirs and also that the share of Smt.Rajo could not be claimed by the heirs of Smt.Bhago. This objection raised before the executing Court was rejected by the learned Civil Judge (Jr.Division), Moga. The learned Judge was of the opinion that the objectors had taken these pleas just to linger on and delay the execution proceedings. Before the lower Appellate Court the appellants raised a further contention that Mukhtiar Singh and Hardwari who are legal heirs of Rajo had moved an application through attorney that they did not want to proceed with the execution application. Learned counsel for the petitioners, appellants in the first appeal, had also argued that legal heirs of Smt.Rajo had relinquished the share of Smt.Rajo in favour of the JDs and thus they

became cosharers in the said property in pursuance to such relinquishment.

The lower Appellate Court has rejected these contentions. The contention that the execution application was filed only by one DH and hence was not maintainable was rejected with the following observations:-

> "9. Learned counsel for appellants argued by taking my attention towards the contents of objection petition and additional objection petition. On the face of both they have no legs to stand. Execution application is maintained by one decree holder if a decree is jointly passed in favour of two or more than tow decree holders. In this regard law is clearly laid down in Order 21 Rule 15 CPC. Even otherwise, position of law is that a suit for recovery of physical possession of immovable property by a co-sharer is maintainable regarding entire joint holdings against third person. If execution application or vakalatnama is not signed by a decree holder or some of decree holders, such is curable irregularity and it can be cured by getting vakalatnama or execution application signed by party or his counsel. In this regard, I rely upon Govind Singh Vs. Deoraj, AIR 1958 Rajasthan 128. If need be execution application can be allowed to be amended. In this regard, I rely upon Rajendra Prasad Agarwalia and others Vs. Allahabad Band and others AIR 1987 Calcutta 262."

I find no error in this view taken by the lower Appellate Court.

In so far as the contentions of the learned counsel that the legal heirs of Smt.Rajo had relinquished their share in favour of the JDs and hence the JDs had become co-sharers and also that two of the legal heirs had moved an application that they did not want to proceed with the execution application are concerned, the same were rejected by the lower Appellate Court with the following observations:-

"11. Learned counsel for the appellants further argued that Mukhtiar Singh and Hardwari through Darshan Singh their attorney moved an application that they do not want to proceed with the execution application. He argued that Mukhtiar Singh and Hardwari are legal heirs of Rajo. If such legal heirs of Rajo are won over by judgment debtors they are unable to frustrate the execution proceedings. If they do not want to join with other decree holders for execution of decree, it does not matter. Any one out of decree holders and an LR of a deceased decree holder is competent to prefer execution application singly for the entire claim in decree.

12. Learned counsel for appellants argued that LRs of Rajo had relinquished share of Rajo in favour of judgment debtors and they became co-sharers in pursuance of such relinquishment. No document of transfer of title was ever executed by Rajo or her LR in favour of judgment debtors. There is no transfer deed of title in favour of judgment debtors or objection petitioners vide which ownership of share of Rajo was transferred in favour of objection petitioners. There is no permissible mode of transfer of ownership of immovable property by simply saying that owner had relinquished his ownership in favour of a person. A valid transfer of title can be effected by satisfying the provisions of Transfer of Property Act, Indian Registration Act and Indian Stamp Act. Learned counsel for appellants cited so many rulings wherein it was observed that on transfer of a share by a decree holder, judgment debtor becomes co-sharer and it cannot be dispossessed from physical possession. Whatever rulings are cited by learned counsel for appellants is concerning a valid transfer of title. Learned counsel for appellants also cited some rulings wherein by relinquishment title held vesting

in beneficiary. On perusal of such rulings it reveals that property involved in case of such rulings was ancestral property. Title can be acquired in ancestral property by way of family settlement, family arrangement which do not require any document. In this execution application, there is no case of any such ancestral property. Therefore, all the rulings cited by learned counsel for appellants are of no avail to enhance the case of appellants. Such rulings are Jagdish and others Vs. Ram Karan and others 2003(1) PLJ 343; Narayani Anuna Vs. Govinder Nambi 1995(1) LJR 261; Milkhi Ram and others Vs. Raghunandan and others AIR 1982 Himachal Pradesh 87; Vaddi Govinda Rajulu Vs. Kaspa Venkata Ramanamurthy 1999 (1) Civil Court Cases 535 (AP); Motilal Shivnarayan Vs. Santaram Bala AIR 1954 Bombay 273; Jagdish Dutt and another Vs. Dharam Pal and others 1999(2) Civil Court Cases 406 (SC). I have carefully gone through all these rulings. With full regard to the law laid down in all these rulings those are not applicable to the facts and circumstances of objection petitions from which present appeal arose. "

Learned counsel for the petitioners before me argued that once the JDs had purchased a portion of the property they also became co-owners. Since they were already co-owners, they could not be deprived of their possession in the property unless first the DH files a separate suit for possession and get his share demarcated. For this proposition learned counsel relied upon judgment of the Hon'ble Supreme Court in **Jagdish Dutt & Anr. v. Dharam Pal & Ors.**, 1999(2) Civil Court Cases 406.

I find no merit in this contention raised by learned counsel for the petitioners. I agree with the view taken by the lower Appellate Court that no title deed has been placed on record by the JDs to show that they have acquired any

title in the said property. In the absence thereof, the contention raised by the JDs has been rightly rejected. I therefore find no merit in the same. Since in the present case no title deed has been produced to show that the JDs have acquired any title in the said property, the judgment cited by the learned counsel would not be attracted in the facts of the present case.

For the reasons aforementioned, I find no merit in this revision petition and the same is accordingly dismissed.

(P.S.PATWALIA)
JUDGE

September 15th , 2006.

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